

HCS SS SCS SB 36 -- ENVIRONMENTAL REGULATIONS

SPONSOR: Klindt (Myers)

COMMITTEE ACTION: Voted "do pass" by the Committee on Agriculture by a vote of 17 to 4.

This substitute makes numerous changes to laws on environmental regulation.

FEES

The waste tire fee will expire on January 1, 2004. The substitute extends the fee to January 1, 2009. The hazardous waste generator and category fees will expire on January 1, 2005. The substitute also extends these fees to January 1, 2010.

IN-STREAM SAND AND GRAVEL MINING

The substitute prohibits the Land Reclamation Commission from requiring permits for in-stream sand and gravel miners if they remove less than 5,000 tons annually. The Department of Natural Resources may establish excavation standards, and the commission may require permits for operators that violate the standards. Political subdivisions may hire contractors for excavation of in-stream sand and gravel without obtaining a permit. Currently, political subdivisions must use their own personnel and equipment to be exempt from permit requirements.

ENVIRONMENTAL RULES

The substitute requires all rules of the Department of Natural Resources, the Hazardous Waste Management Commission, the State Soil and Water Districts Commission, the Land Reclamation Commission, the Safe Drinking Water Commission, the Air Conservation Commission, and the Clean Water Commission to cite the specific legal authority under which they were promulgated. The department must also prepare a regulatory impact report that includes the peer-reviewed scientific data that form the basis for the rule, cost-benefit analyses, an explanation of the risks to human health or the environment addressed by the rule, and a description of alternative regulatory approaches. The report must be made available for public comment on the Internet for at least 60 days and filed with the Joint Committee on Administrative Rules. If the department does not prepare a regulatory impact report, the proposed rule is invalid unless the director determines that immediate action is necessary to protect human health or the environment. The director must justify this action in writing, and the department must complete the regulatory impact report within 180 days after the rule is

adopted.

The substitute also prohibits most rules on clean air, clean water, underground storage tanks, hazardous waste management, surface mining, land reclamation, safe drinking water, and solid waste management from being stricter than the scope of state requirements as of August 28, 2003. In cases where there are either insufficient or no existing state guidelines, the department may develop more restrictive rules if there is substantial evidence that an activity will have an adverse impact on human health or the environment and that a rule is necessary to prevent or alleviate the impact. Specific findings on the impact and a justification for the proposed rule must be published in the Missouri Register. The rule's fiscal note must also include an assessment of the effectiveness and cost of any reasonably available pollution control methods required by the rule. The department may adopt emergency rules if there is an immediate threat to human health or the environment, but must provide the required findings and justification within 180 days. To promulgate a rule that pertains only to a specific defined area of the state, the department must hold a hearing within the local area.

Further, the substitute places the burden of proof on the department and its commissions to prove that a rule is necessary to prevent specific circumstances or conditions that harm human health and the environment.

ENVIRONMENTAL PERMITS

The substitute prohibits the department from issuing a notice of violation or imposing a fine for failure to file a required permit report on time until the department has made a reasonable attempt to notify the permit holder about the delinquent report by registered mail and allowed 30 days for the report to be filed. Notification is not required for permit holders who have previously failed to file two or more reports on time within the past year or four or more reports on time in the last five years. The substitute also limits fines for failure to file reports on time to \$500 for first violations.

The substitute also prohibits the department from placing any requirements in permits that are not prescribed by regulation, allows permit applicants to correct drafting errors without paying any modification fee, requires the department and its commissions to clearly state the reason for permit denials, and prohibits the department from revoking or changing an approved permit for one year unless immediate action is necessary to protect human health or the environment.

OTHER PROVISIONS

The substitute also:

- (1) Allows only parties with a specific, legal property interest to appeal decisions of the director of the department to the appropriate board or commission. Current law allows appeals by any affected parties;
- (2) Prohibits solid waste processing facilities from storing waste for more than 48 hours over any regular weekend or for more than 72 hours over a holiday weekend;
- (3) Prohibits political subdivisions from offering waste collection services outside their boundaries;
- (4) Allows Johnson County, if approved by voters, to establish a landfill fee of up to \$1.50 per ton for economic development. Current law only allows third classification counties to establish these fees; and
- (5) Repeals provisions that require class B air contaminant sources to have operating permits.

FISCAL NOTE: Estimated Net Cost to General Revenue Fund of \$139,636 to Unknown in FY 2004, \$151,626 to Unknown in FY 2005, and \$155,526 to Unknown in FY 2006. Savings to Mined Land Reclamation Fund of \$26,000 in FY 2004, FY 2005, and FY 2006. Income to Hazardous Waste Remedial Fund of \$0 in FY 2004, \$1,349,499 in FY 2005, and \$2,764,239 in FY 2006. Estimated Net Income to Solid Waste Management Fund of \$1,038,052 in FY 2004, \$2,076,104 in FY 2005 and \$2,076,104 in FY 2006. Total Loss Other Air Operating Permit Fund of \$76,000 in FY 2004, FY 2005, and FY 2006.

PROPONENTS: Supporters say that cumbersome rules and regulations cost Missouri jobs and places an undue fiscal burden on both rural and urban businesses. The substitute puts common sense in the rule making procedure of the Department of Natural Resources. The substitute allows land owners to mine in-stream their own sand and gravel, municipalities to retain a contractor to mine in-stream sand and gravel for municipal use, and small operators to mine without a permit if mining in-stream less than 5,000 tons of sand and gravel per year.

Testifying for the bill were Senator Klindt; Missouri Chamber of Commerce; Missouri Corn Growers Association; Missouri Farm Bureau; Associated Industries of Missouri; St. Louis Regional Chamber and Growth Association; Missouri Forest Products; and Senator Steelman's Office.

OPPONENTS: Those who oppose the bill say that the negative effects of in-stream gravel mining include erosion of streamside private property and real estate value; erosion of public property; damage to private and public infrastructure, including roads, bridges, pipelines, and utility lines; losses in productivity of fisheries; and losses of biological productivity. The regulatory impact report required for each proposed rule pursuant to the substitute holds the Department of Natural Resources to a higher standard than other departments, invalidates rules previously promulgated by the department, and opens the department to litigation.

Testifying against the bill were Representative Kuessner; Ozark Fly Fishers; Ozark Council Trout Unlimited; Office of the Attorney General; Missouri Votes Conservation; Sierra Club; Stream Team Association; Missouri Smallmouth Alliance; Missouri Chapter of American Fisheries; and Joel Vance.

Roland Tackett, Legislative Analyst